



January 7, 2002

Mr. Dan Junell
Interim Executive Director
State Board of Educator Certification
1001 Trinity
Austin, Texas 78701-2603

OR2002-0092

Dear Mr. Junell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156955.

The State Board for Educator Certification ("SBEC") received two requests from the same requestor for 1) the requestor's score on the Examination for the Certification of Educators in Texas ("ExCET") superintendent's test, and 2) a copy of a certain letter sent to SBEC by Stephen F. Austin University. You inform us by letter dated November 2, 2001, that SBEC withdraws its request to the Attorney General for a decision as to the second request. To the extent that SBEC holds information responsive to that request, we assume that SBEC has released the information to the requestor. If not, you must do so at this time. *See* Gov't Code §§ 552.301, .302. You inform us that no information responsive to the first request exists. Alternatively, you claim that the information responsive to the first request is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have reviewed the submitted information.

We note that the requestor seeks his ExCET scores "*when my scantron is graded.*" You inform us that at the time the requestor submitted his request for the information at issue, the information did not exist. Additionally, you inform us that although the requestor's test has been scanned, it has not been scored, and that scoring would require additional operations beyond scanning. Chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not exist when governmental body

receives a request for it).¹ Further, a governmental body is not required to prepare new information to respond to a request for information. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681(Tex. App.–Eastland, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975). Nor does the Act require a governmental body to inform a requestor if the requested information comes into existence after the request is made. Open Records Decision No. 452 at 8. Consequently, a governmental body is not required to comply with a continuing request to supply information on a periodic basis as such information is prepared in the future. Attorney General Opinion JM-48 at 2 (1983); Open Records Decision Nos. 476 at 1, 465 at 1 (1987). Because the information did not exist at the time SBEC received the request, we conclude that SBEC need not comply with the first request.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹*Cf.* Open Records Decision No. 561 at 8 (1990) (governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body *holds*).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kay Hastings". The signature is fluid and cursive, with the first name "Kay" being more prominent.

Kay Hastings
Assistant Attorney General
Open Records Division

KH/JSB/sdk

Ref: ID# 156955

c: Mr. Paul Mizler
2844 ACR 100
Elkhart, Texas 75839